SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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KAREN LEE FAIN,

Plaintiff,

-against-

JEFFREY GEORGE BERRY, CORNWALL CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF THE CORNWALL CENTRAL SCHOOL DISTRICT, JOHN AND JANE DOE 1-30, teachers, supervisors, employees, in their official and individual employees, in their official and individual capacities, whose identities are presently unknown to Plaintiff,

Defendants.

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Index No.
Date Purchased:

Plaintiff designates ORANGE County as the place of trial.

The basis of the venue is Defendants' place of business.

**SUMMONS**

To the above-named Defendant(s)

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in this complaint.

Dated: New York, New York
September 24, 2019

MICHAEL G. DOWD
600 Third Avenue, 15th Floor
New York, NY 10016
(212) 751-1640

SWEENEY, REICH & BOLZ, LLP
By: Gerard J. Sweeney, Esq.
1981 Marcus Avenue, Suite 200
Lake Success, NY 11042
(718) 459-9000

Attorneys for Plaintiff

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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KAREN LEE FAIN,

Plaintiff,

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Date Filed:

-against-

JEFFREY GEORGE BERRY, CORNWALL CENTRAL SCHOOL DISTRICT, BOARD OF EDUCATION OF THE CORNWALL CENTRAL SCHOOL DISTRICT, JOHN AND JANE DOE 1-30, teachers, supervisors, employees, in their official and individual employees, in their official and individual capacities, whose identities are presently unknown to Plaintiff,

Defendants.

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**VERIFIED COMPLAINT**

Plaintiff, KAREN LEE FAIN, by her attorney, MICHAEL G. DOWD, complaining of Defendants, hereby alleges the following:

## JURISDICTION AND VENUE

1. This action is timely commenced pursuant to the New York State Child Victims Act, dated February 14, 2019, and CPLR § 214-g.

2. This Court has jurisdiction pursuant to CPLR § 301 as Defendants' principal place of business is in New York and because much of the unlawful conduct complained of herein occurred in New York.

3. Venue is proper pursuant to CPLR § 503 because Orange County is the principal place of business of Defendants. In addition, many of the events giving rise to this action occurred in Orange County.

**AS AND FOR A FIRST CAUSE OF ACTION:**

**NEGLIGENT SUPERVISION**

4. The Plaintiff, KAREN LEE FAIN, maiden last name, VAN SETERS (hereinafter "PLAINTIFF") was born on July 31, 1954. She is a resident of Pennsylvania.

5. Defendant CORNWALL CENTRAL SCHOOL DISTRICT (hereinafter "DISTRICT") is at all material times a public school district existing under the laws of the State of New York.

6. CORNWALL CENTRAL HIGH SCHOOL is at all material times a public school for grades Nine (9) through Twelve (12) existing in Orange County, New York located at 10 Dragon Drive, New Windsor, New York 12553 and a part of DISTRICT.

7. Defendant BOARD OF EDUCATION OF THE CORNWALL CENTRAL SCHOOL DISTRICT (hereinafter "BOARD OF EDUCATION") is at all material times a municipal corporation duly organized and existing under, and by virtue of the State of New York located at 24 Idlewild Avenue, Cornwall-on-the-Hudson, New York 12520 and is a part of DISTRICT.

8. JOHN AND JANE DOE 1-30, whose names are presently unknown, were members of BOARD OF EDUCATION during all material times herein. JOHN AND JANE DOE 1-30 are the persons and/or entities who run, manage, operate, supervise, oversee, fund, are joint venturers, parent organizations, are the subsidiaries, are contractually related and/or are principals and/or agents of the business, entities, and/or principals, who owed a duty of care to PLAINTIFF and breached that duty of care. JOHN AND JANE DOE 1-30 are the persons and/or

entities who were responsible for the oversight and administration of CORNWALL CENTRAL HIGH SCHOOL, including but not limited to hiring CORNWALL CENTRAL HIGH SCHOOL's teachers and department heads.

9. Defendants DISTRICT, BOARD OF EDUCATION and JOHN AND JANE DOE 1-30 shall be hereinafter referred to as "School Defendants."

10. Defendant JEFFREY GEORGE BERRY (hereinafter "BERRY") was hired by BOARD OF EDUCATION as a Substitute Teacher at CORNWALL CENTRAL HIGH SCHOOL in 1969.

11. Upon information and belief, BERRY was promoted over the summer of 1970 from being a Substitute Teacher to being a full-time Seventh ($7^{th}$) and Eighth ($8^{th}$) grade Social Studies teacher at CORNWALL CENTRAL HIGH SCHOOL.

12. Defendants BERRY, DISTRICT, BOARD OF EDUCATION, and JOHN AND JANE DOE 1-30 will be referred to collectively as "Defendants."

13. Upon information and belief, when BERRY met PLAINTIFF in the fall of 1970, he was an employee and agent of Defendants acting within the course and scope of his authority as a CORNWALL CENTRAL HIGH SCHOOL teacher. BERRY continued acting as an employee and agent of Defendants through the entire period when BERRY sexually abused PLAINTIFF.

14. PLAINTIFF first met BERRY in around 1970 when she was in the Tenth ($10^{th}$) grade.

15. Upon information and belief, BERRY's class was held on the campus of CORNWALL CENTRAL HIGH SCHOOL.

16. Commencing in around 1970, BERRY began a process of grooming PLAINTIFF with the goal of sexually abusing her.

17. The grooming included but was not limited to: BERRY talking with PLAINTIFF during study hall during normal school hours, BERRY winking at PLAINTIFF in the school hallways, BERRY telling PLAINTIFF that she was "beautiful" and "pretty", BERRY telling other CORNWALL CENTRAL HIGH SCHOOL teachers/ employees that PLAINTIFF was "pretty" and "beautiful" while they were in the presence of PLAINTIFF, BERRY touching PLAINTIFF's legs with his legs underneath tables at the Newburgh Public Library, and BERRY driving PLAINTIFF to the Newburgh Public Library.

18. All of the above-mentioned grooming behavior occurred on the CORNWALL CENTRAL HIGH SCHOOL property and the Newburgh Public Library.

19. The above-mentioned grooming behavior, except the grooming done in the car, was done in the presence of, or within the observation of CORNWALL CENTRAL HIGH SCHOOL employees, teachers and administrators.

20. At all material times, PLAINTIFF was aware of no CORNWALL CENTRAL HIGH SCHOOL or Defendants' rules or regulations or policies concerning or addressing sexual abuse, sexual harassment, and sexual misconduct of CORNWALL CENTRAL HIGH SCHOOL students, such as PLAINTIFF, by teachers and/ or employees such as BERRY.

21. During all material times, PLAINTIFF received no training or information in any form, including but not limited to, classroom instruction or oral presentation, through video or written document on how to deal with sexual misconduct, sexual

abuse, sexual boundary violations or sexually harassing behavior by CORNWALL CENTRAL HIGH SCHOOL teachers and/ or staff on students like herself.

22. Between about 1970 and 1972, BERRY sexually abused PLAINTIFF.

23. After a CORNWALL CENTRAL HIGH SCHOOL sanctioned school dance in 1970, BERRY drove PLAINTIFF to a secluded area by the Hudson River, kissed her and told PLAINTIFF that if they wanted to continue seeing each other they would not be able to tell anyone. In the following months, BERRY signaled a time and location for PLAINTIFF to meet him as he was leaving school so he could pick her up and drive her to secluded parking lots and fields and proceeded to abuse her by touching and fondling her breasts under her shirt and fondling and touching her genitals.

24. Soon thereafter, the abuse escalated with BERRY cajoling and otherwise requiring PLAINTIFF to perform oral sex upon him.

25. In addition to the above forms of sexual abuse, the abuse also extended to sexual intercourse with PLAINTIFF.

26. The abuse occurred in BERRY's car, parking lots, in secluded fields and in BERRY'S bedroom.

27. PLAINTIFF was sexually abused by BERRY about every 2-4 days throughout her last two years in high school. In total, PLAINTIFF believes she was sexually abused over one-hundred (100) times between about 1970-1972.

28. Upon information and belief, during all material times herein, when PLAINTIFF was enrolled in school and communicating and otherwise interacting with

BERRY, she was entrusted by her parent to the care of Defendants and during such periods the Defendants were acting in the capacity of *in loco parentis* because Defendants assumed custody and control over her as a minor child and as a student at the school.

29. Upon information and belief, BERRY used his position of trust and authority vested in him by the Defendants for the purpose of sexually abusing PLAINTIFF.

30. Upon information and belief, the sexual abuse of PLAINTIFF by BERRY was foreseeable.

31. Upon information and belief, at all material times, Defendants had the duty to exercise the same degree of care and supervision over the students, including PLAINTIFF, under their control as a reasonably prudent parent would have exercised under the same circumstances. This means that Defendants assumed a duty of care to protect the safety and welfare of PLAINTIFF as a student at CORNWALL CENTRAL HIGH SCHOOL. At all material times, Defendants owed a duty to PLAINTIFF to provide a safe and nurturing educational environment, where she would be protected from teachers and/or staff like BERRY who were under the employment and control of the Defendants.

32. Upon information and belief, during BERRY's employment by CORNWALL CENTRAL HIGH SCHOOL and while PLAINTIFF was a student in CORNWALL CENTRAL HIGH SCHOOL's care, Defendants failed to exercise the degree of care that a reasonably prudent parent would have exercised under similar circumstances.

33. During all material times, Defendants owed a special duty to PLAINTIFF that required Defendants to take reasonable steps to anticipate such behavior from its employees like BERRY, which threatened the safety of students including PLAINTIFF.

34. At all material times, Defendants had a duty to properly supervise BERRY as their employee and because of their duty of care to PLAINTIFF.

35. At all material times, PLAINTIFF reposed her trust and confidence as a student and minor child in Defendants, who occupied a superior position of influence and authority over PLAINTIFF to provide PLAINTIFF with a safe and secure educational environment.

36. Upon information and belief, at all material times, Defendants knew or should have known of BERRY's propensity to sexually abuse minor students.

37. Upon information and belief, the Defendants negligently failed to adequately implement a reasonable or effective supervisory system, plan, protocol or procedure for supervising personnel so as to prevent inappropriate, offensive, sexual and/or abuse or contact of students by Defendants' employees.

38. Upon information and belief, the failure to supervise, includes but is not limited to, failure to supervise BERRY's classroom during non-instructional time when he associated with students, failure to supervise BERRY's interactions with students during school events, such as school dances, and failure to adequately supervise students during non-instructional time on the CORNWALL CENTRAL HIGH SCHOOL campus.

39. Upon information and belief, the injury to PLAINTIFF resulted from Defendants' failure to provide PLAINTIFF the supervision of a parent of ordinary prudence under the same circumstances.

40. Upon information and belief, the injuries to PLAINTIFF were a foreseeable consequence of Defendants' negligent failure to supervise BERRY and PLAINTIFF. Said injuries were caused by or contributed to by the carelessness, recklessness and the grossly negligent conduct of the Defendants, their agents, servants and/or employees, in failing to properly and adequately supervise the conduct of BERRY as it related to the PLAINTIFF.

41. Defendants were wanton, reckless, officially tolerant and deliberately indifferent to abuse of PLAINTIFF by BERRY.

42. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to, severe emotional distress, depression, humiliation, embarrassment, fright, anger, anxiety, and loss of educational opportunity and has been caused to suffer pain and mental anguish, emotional and psychological damage as a result thereof, and, upon information and belief, some or all of these injuries are of a permanent and lasting nature; and PLAINTIFF has become and will continue to be obligated to expend sums of money for medical expenses.

43. That by reason of the foregoing, Defendants are liable to PLAINTIFF for punitive and exemplary damages.

44. It is hereby alleged pursuant to CPLR 1603 that the foregoing cause of action is exempt from the operation of CPLR 1601 by reason of one or more of the

exemptions provided in CPLR 1602, including but not limited to, CPLR 1602(7).

45. That the amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A SECOND CAUSE OF ACTION:**

**NEGLIGENT RETENTION**

46. PLAINTIFF repeats and realleges the above paragraphs of this Complaint as if fully set forth herein.

47. Upon information and belief, as more fully alleged above, Defendants' duty of care to the PLAINTIFF included a duty not to retain an employee like BERRY who would use his position of authority and influence to harm students such as PLAINTIFF.

48. Upon information and belief, Defendants knew or should have known that BERRY was grooming PLAINTIFF for the purpose of sexually abusing her and failed to take any steps to stop the abuse or prevent harm to PLAINTIFF.

49. Upon information and belief, reasonable suspicions of sexual abuse of PLAINTIFF by BERRY were brought to the attention of the Superintendent of DISTRICT in about the fall of 1971.

50. After a brief meeting with the Superintendent, PLAINTIFF, PLAINTIFF's father and BERRY, BERRY remained employed by DISTRICT until he attended Law School in the fall of 1972.

51. Upon information and belief, Defendants knew or should have known that BERRY was sexually abusing PLAINTIFF and/or knew or should have known of his propensity to sexually abuse minor students with whom he came in contact.

52. When PLAINTIFF was in their care, said Defendants failed to exercise the degree of care that a reasonably prudent parent would have exercised under similar circumstances.

53. Defendants were wanton, reckless, officially tolerant and deliberately indifferent to abuse of PLAINTIFF by BERRY.

54. Defendants are liable to PLAINTIFF as a result of their recklessness, official tolerance and deliberate indifference to the harm caused to PLAINTIFF by BERRY.

55. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to, severe emotional distress, depression, humiliation, embarrassment, fright, anger, anxiety, and loss of educational opportunity and has been caused to suffer pain and mental anguish, emotional and psychological damage as a result thereof, and, upon information and belief, some or all of these injuries are of a permanent and lasting nature; and PLAINTIFF has become and will continue to be obligated to expend sums of money for medical expenses.

56. That by reason of the foregoing, Defendants are liable to PLAINTIFF for punitive and exemplary damages.

57. It is hereby alleged pursuant to CPLR 1603 that the foregoing cause of action is exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to, CPLR 1602(7).

58. That the amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A THIRD CAUSE OF ACTION:**

**NEGLIGENT FAILURE TO TRAIN TEACHERS AND ADMINISTRATORS RELATED TO SEXUAL ABUSE AND TRAIN STUDENTS RELATING TO SEXUAL ABUSE**

59. PLAINTIFF repeats and realleges the above paragraphs of this Complaint as if fully set forth herein.

60. Upon information and belief, Defendants, their agents, servants and employees owed a duty of care to PLAINTIFF as more fully alleged above. That duty included the duty to train and educate employees and administrators and establish adequate and effective policies and procedures calculated to detect, prevent and address inappropriate teacher and/ or employee behavior and conduct including teacher – student and/ or employee – student boundary violations, sexually inappropriate teacher and/ or employee behavior and conduct and the sexual abuse of students by teachers and/ or employees for the purpose of preventing the sexual abuse of students like PLAINTIFF.

61. Upon information and belief, Defendants did not establish effective training and education programs, policies and procedures for their administrators, teachers and employees calculated to detect, prevent and address the problem of the inappropriate teacher and/ or employee behavior and conduct including teacher – student and/ or employee – student boundary violations, sexually inappropriate teacher and/ or employee behavior and conduct and the sexual abuse of students by employees.

62. Upon information and belief, in failing to establish such training and education programs, policies and procedures for employees and administrators, Defendants

failed to exercise the degree of care that a reasonably prudent parent would have exercised under similar circumstances.

63. Upon information and belief, Defendants had a duty to train and educate students including PLAINTIFF on inappropriate teacher and/ or employee behavior and conduct including teacher – student and/ or employee – student boundary violations, sexually inappropriate teacher and/ or employee behavior and conduct and the sexual abuse of students by teachers and/ or employees and to establish effective policies and procedures to address said problems.

64. Upon information and belief, Defendants did not train and educate PLAINTIFF on the problem of inappropriate teacher and/ or behavior and conduct including teacher – student and/ or employee – student boundary violations, sexually inappropriate teacher and/ or employee behavior and conduct and the sexual abuse of students by teachers and/ or employee and did not establish effective policies and procedures to address said problems.

65. Upon information and belief, in failing to establish such training and education programs, policies and procedures for students like PLAINTIFF, Defendants failed to exercise the degree of care that a reasonably prudent parent would have exercised under similar circumstances.

66. Upon information and belief, Defendants are liable to PLAINTIFF, as the result of their negligent failure to establish effective training and education programs, policies and procedures for their administrators, teachers and employees calculated to detect and prevent inappropriate teacher and/ or employee behavior and conduct and the including teacher – student and/ or employee – student

boundary violations, sexually inappropriate teacher and/ or employee behavior and conduct and the sexual abuse of students by teachers and/ or employees. Defendants are also liable to PLAINTIFF for their failure to train and educate PLAINTIFF as a student on the problem of inappropriate teacher and/ or employee behavior and conduct including teacher – student and/ or employee – student boundary violations, sexually inappropriate teacher and/ or employee behavior and conduct and the sexual abuse of students by teachers and/ or employees and to establish effective policies and procedures to address said problems.

67. Defendants were wanton, reckless, officially tolerate and deliberately indifferent by their failure to develop such effective training and education programs, policies and procedures for employees, administrators and students.

68. Defendants, their agents, servants and employees were negligent, careless and reckless and acted willfully, wantonly and were grossly negligent in failing to establish adequate and effective professional training and education programs and procedures for their employees calculated to prevent abuse of youth.

69. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to, severe emotional distress, depression, humiliation, embarrassment, fright, anger, anxiety, and loss of educational opportunity and has been caused to suffer pain and mental anguish, emotional and psychological damage as a result thereof, and, upon information and belief, some or all of these injuries are of a permanent and lasting nature; and PLAINTIFF has become and will continue to be obligated to expend sums of money for medical

expenses.

70. That by reason of the foregoing, Defendants are liable to PLAINTIFF for punitive and exemplary damages.

71. It is hereby alleged pursuant to CPLR 1603 that the foregoing cause of action is exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to, CPLR 1602(7) and 1602(11).

72. That the amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

**AS AND FOR A FOURTH CAUSE OF ACTION:**

**NEGLIGENT FAILURE TO PROVIDE A SAFE AND SECURE ENVIRONMENT**

73. PLAINTIFF repeats and realleges the above paragraphs of this Complaint as if fully set forth herein.

74. At all material times, as more fully set forth above, Defendants had the duty to exercise the same degree of care and supervision over the students under their control as a reasonably prudent parent would have exercised under similar circumstances.

75. During all material times, Defendants owed a special duty to PLAINTIFF as a student. This special duty required Defendants to take reasonable steps to anticipate such threats from its employees like BERRY which threatened the safety of PLAINTIFF.

76. Upon information and belief, by virtue of both their duty of care to PLAINTIFF and the positions of authority and influence they exercised over her, Defendants

had a duty to PLAINTIFF to provide her a reasonably safe and secure environment at CORNWALL CENTRAL HIGH SCHOOL.

77. Upon information and belief, Defendants failed to provide a reasonably safe environment to PLAINTIFF by failing to exercise the degree of care that a reasonably prudent parent would have exercised under similar circumstances.

78. As a result, Defendants are liable to PLAINTIFF for their negligent failure to provide a reasonably safe and secure environment.

79. By reason of the foregoing, PLAINTIFF sustained physical and psychological injuries, including but not limited to, severe emotional distress, depression, humiliation, embarrassment, fright, anger, anxiety, and loss of educational opportunity and has been caused to suffer pain and mental anguish, emotional and psychological damage as a result thereof, and, upon information and belief, some or all of these injuries are of a permanent and lasting nature; and PLAINTIFF has become and will continue to be obligated to expend sums of money for medical expenses.

80. That by reason of the foregoing, Defendants are liable to PLAINTIFF for punitive and exemplary damages.

81. It is hereby alleged pursuant to CPLR 1603 that the foregoing cause of action is exempt from the operation of CPLR 1601 by reason of one or more of the exemptions provided in CPLR 1602, including but not limited to, CPLR 1602(7) and 1602(11).

82. That the amount of damages sought exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

WHEREFORE, the Plaintiff demands judgment against the Defendants, together with compensatory and punitive damages, and the interest, costs and disbursements pursuant to the causes of action herein.

Dated: New York, New York
September 24, 2019

MICHAEL G. DOWD
600 Third Avenue, 15th Floor
New York, NY 10016
(212) 751-1640

SWEENEY, REICH & BOLZ, LLP
By: Gerard J. Sweeney
1981 Marcus Avenue, Suite 200
Lake Success, NY 11042
(718)-459-9000

Attorneys for Plaintiff

## VERIFICATION BY ATTORNEY

MICHAEL G. DOWD, an attorney being duly admitted before the courts of the State of New York, hereby affirms the following under penalties of perjury:

That he is an attorney for the Plaintiff in the above-entitled action with offices located at 600 Third Ave, New York, New York; that he has read the foregoing VERIFIED COMPLAINT and knows the contents thereof; that the same is true to his knowledge, except as to the matters stated to be alleged upon information and belief, and that as to those matters he believes them to be true.

That the reason why this verification is made by deponent instead of Plaintiff is because Plaintiff is not within the County of New York where deponent has his office. Deponent further says that the grounds of his belief as to all matters in the VERIFIED COMPLAINT not stated to be upon his knowledge are based upon conversations with the Plaintiff and other writings relevant to this action.

Dated: New York, New York
September 24, 2019

MICHAEL G. DOWD
Attorney for Plaintiff
600 Third Avenue, 15th Floor
New York, NY 10016
(212) 751-1640